



COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Extend Collection

3038-0079: Swap Dealer and Major Swap Participant Conflicts of Interest and

Business Conduct Standards with Counterparties

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including a proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the information collections included in certain Commission’s regulations, requiring swap dealers (“SDs”) and major swap participants (“MSPs”) to follow specified procedures and provide specified disclosures in their dealings with counterparties, to adopt and implement conflicts of interest procedures and disclosures, and to maintain specified records related to those requirements.

DATES: Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by “OMB Control No. 3038-0079,” by any of the following methods:

- *Online:* The CFTC Comments Portal, on the agency’s website, is available at <https://comments.cftc.gov>. Select the “Submit Comments” link for this rulemaking and follow the instructions on the Public Comment Form.

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- *Hand Delivery/Courier:* Follow the same instructions as for Mail above.

Please submit your comments using only one of these methods. All comments must be submitted in English, or if not, accompanied by an English translation.

Comments will be posted as received to <https://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Dina Moussa, Special Counsel, 202-418-5696, dmoussa@cftc.gov, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

SUPPLEMENTARY INFORMATION: Under the PRA,¹ Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA² requires Federal agencies to provide a 60-day notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.³

¹ 44 U.S.C. 3501 *et seq.*

² 44 U.S.C. 3506(c)(2)(A).

³ 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

Title: Swap Dealer and Major Swap Participant Conflicts of Interest and Business Conduct Standards with Counterparties (OMB Control No. 3038-0079). This is a request for an extension of a currently approved information collection.

Abstract: Section 731 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act⁴ amended the Commodity Exchange Act (“CEA”) to add sections 4s(h) and 4s(j)(5)⁵, which provide the Commission with both mandatory and discretionary rulemaking authority to impose business conduct requirements on SDs and MSPs in their dealings with counterparties, including “Special Entities,”⁶ and require that each SD and MSP implement conflicts of interest systems and procedures. Congress granted the Commission broad discretionary authority to promulgate business conduct requirements, as appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the CEA.⁷

Accordingly, the Commission has adopted subpart H of part 23 of its regulations (“EBCS Rules”)⁸ and § 23.605,⁹ requiring SDs and MSPs to follow specified procedures and provide specified disclosures in their dealings with counterparties, to adopt and implement conflicts of interest procedures and disclosures, and to maintain specified records related to those requirements.

⁴ Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

⁵ 7 U.S.C. 6s(h) and (j)(5).

⁶ Such entities are generally defined to include Federal agencies, States and political subdivisions, employee benefit plans as defined under the Employee Retirement Income Security Act of 1974 (“ERISA”), governmental plans as defined under ERISA, and endowments.

⁷ See section 4s(h)(3)(D) of the CEA, 7 U.S.C. 6s(h)(3)(D) (Business conduct requirements adopted by the Commission shall establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the CEA); see also sections 4s(h)(1)(D), 4s(h)(5)(B) and 4s(h)(6) of the CEA; 7 U.S.C. 6s(h)(1)(D), 6s(h)(5)(B) and 6s(h)(6).

⁸ 17 CFR part 23, subpart H. Subpart H of part 23 (titled Business Conduct Standards for Swap Dealers and Major Swap Participants Dealing with Counterparties, Including Special Entities) includes the following provisions: § 23.400 (Scope); § 23.401 (Definitions); § 23.402 (General Provisions); § 23.410 (Prohibition on fraud, manipulation and other abusive practices); § 23.430 (Verification of counterparty eligibility); § 23.431 (Disclosures of material information); § 23.432 (Clearing disclosures); § 23.433 (Communications—fair dealing); § 23.434 (Recommendations to counterparties—institutional suitability); § 23.440 (Requirements for swap dealers acting as advisors to Special Entities); § 23.450 (Requirements for swap dealers and major swap participants acting counterparties to Special Entities); and § 23.451 (Political contributions by certain swap dealers).

⁹ 17 CFR 23.605. Section 23.605 is titled Conflicts of interest policies and procedures.

The recordkeeping and third-party disclosure obligations imposed by the regulations are essential to ensuring that SDs and MSPs develop and maintain procedures and disclosures required by the CEA and Commission regulations.¹⁰

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act ("FOIA"), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.¹¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from

¹⁰ Reporting under § 23.451 (Political contributions by certain swap dealers) is optional and it is unknown how many registrants, if any, will engage in such reporting and how much burden, if any, will be incurred. Nevertheless, the Commission is providing an estimate of the regulation's burden for purposes of the PRA below.

¹¹ 17 CFR 145.9.

<https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

Burden Statement: The Commission is revising its estimate of the burden for this collection based on a decrease in the current number of Commission-registered SDs.¹²

The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 106.

Estimated Average Burden Hours Per Respondent: 2,352.9 hours.

Estimated Total Annual Burden Hours: 249,412 hours.

Frequency of Collection: Ongoing.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 30, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

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¹² Specifically, the change for the renewal is based solely on the decreased number of entities provisionally-registered with the Commission as SDs (109 at the last renewal in 2020 and 106, currently, as of June 7, 2023), as the annual total burden hours has remained the same--at 2,352.9 hours per respondent. And just as before, there are no entities currently registered as MSPs.